



**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION & SENIOR CITIZEN AFFAIRS
DIRECTORATE OF SOCIAL DEVELOPMENT**

SUBSTANTIVE INPUT ON THE FOCUS AREA ON “PARTICIPATION IN PUBLIC LIFE AND IN DECISION-MAKING PROCESSES” FOR THE 14TH SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING

NATIONAL AND LOCAL LEGAL AND POLICY FRAMEWORK

- 1. What are the national and local legal provisions and policy frameworks in your country that guarantee;**
 - a) The right to equality and prohibition of all forms of discrimination against older persons on the basis of age, alone or combined with other grounds, in the context of participation in public life and in decision-making processes;**
 - i. The Constitution of Kenya, 2010, Article 10 (2) (b)**, affirms among others inclusiveness, equality, human rights and non-discrimination as the key tenets of national values and principles of governance. **Article 21 (3)**, on the implementation of rights and fundamental freedoms, bestows the duty to all state organs and all public officers to address the needs of vulnerable groups within society, including older members of society. **Article 27** of the Constitution extensively affirms among others that every person is equal before the law and has the right to equal protection and equal benefit of the law. **Article 43 (3)** obligates the state to provide appropriate social security to needy persons (including older persons who may not be able to support/provide for themselves). **Article 57** calls for the state to take measures to ensure the rights of older persons to fully participate in the affairs of society, pursue their personal development, live in dignity and respect and be free from abuse; and receive reasonable care and assistance from their family and the State.



**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION & SENIOR CITIZEN AFFAIRS
DIRECTORATE OF SOCIAL DEVELOPMENT**

- ii. **The Persons with Disabilities Act, of 2003:** The Act provides that the minimum retirement age for persons with disabilities shall be 5 years above the government mandatory retirement age of 60 years.
- iii. **The National Policy on Older Persons and Ageing (2018):** The goal of the Policy is to provide an environment that recognizes, empowers and facilitates older persons to participate in society and enjoy their rights and freedoms and live in dignity.
- iv. **Kenya National Social Protection Policy 2023:** The Policy provides for inclusive life cycle approach addressing challenges faced by citizens of all ages; equity, non-discrimination and social justice towards building a more equitable society.
- v. **Social Health Insurance Act 2023:** 'Universal Health Coverage' individuals and communities receive the health they need including the full spectrum of essential, quality health services from health promotion to prevention, treatment, rehabilitation, and palliative care without suffering financial hardship; whereby older persons are catered for.
- vi. **The Employment Act, 2007** promotes equality and prohibits discrimination at the workplace.

b) Elimination of all forms of ageism and age discrimination from laws, frameworks, programs, policies, strategies and practices regarding participation in public life and in decision-making processes;

The Kenya Vision 2030 social pillar addresses the rights of vulnerable groups such as, older persons to social protection.



**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION & SENIOR CITIZEN AFFAIRS
DIRECTORATE OF SOCIAL DEVELOPMENT**

c) Right to freedom of expression, including freedom to seek, receive and impart information;

Article 33 (1) of the Constitution affirms that every person including older persons have the right of expression.

d) Right of peaceful assembly;

Article 37 of the Constitution provides that every person including older persons have the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities.

e) Right to freedom of association;

Article 36 of the Constitution guarantees every person the freedom of association.

f) Right to take part in the government of one's country, directly or through freely chosen representatives;

Article 38 of the Constitution provides for among others that every citizen including older persons are free to make political choices.

g) Active, free and meaningful participation of older persons and their representative organizations in all matters related to participation in public life and in decision-making processes;

- **Article 10 (2) (a)** of the Constitution provides for patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people (including older persons).



**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION & SENIOR CITIZEN AFFAIRS
DIRECTORATE OF SOCIAL DEVELOPMENT**

- **Article 69 (1) (d)** of the Constitution obligates the State to among other measures encourage public (including older persons) to participate in the management, protection and conservation of the environment.
- **Article 118 (1) (d)** obligates parliament to among others facilitate public (including older persons) participation and involvement in the legislative and other business of Parliament and its committees.

h) Access to prompt remedies and redress when older persons' above-mentioned rights are violated.

- **Article 23 (1) and (2)** of the Constitution empowers the Judiciary to hear and determine human rights violations.
- **Article 159 (2) (c)** obligates the Judiciary to promote the application of Alternative Justice Systems.
- **Article 59** of the Constitution establishes and mandates KNCHR, NGEC and CAJ to receive, investigate and redress human rights violations.
- **The National Police Service Act** obligates the National Police Service to investigate and arrest suspects who violate the rights of older persons.

2. What steps have been taken to ensure participation in public life and in decision-making processes without discrimination?

- Extension of retirement age for persons with disabilities to 65 years. This protects older persons with disability from early retirement while ensuring they have the right to fully participate as productive members in society.
- Provision of assistive devices to older persons with disabilities.



**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION & SENIOR CITIZEN AFFAIRS
DIRECTORATE OF SOCIAL DEVELOPMENT**

- Inclusion of older persons in the Older Persons Cash Transfer Programmes.
- Adult Education: This encompasses formal and informal education within their local environment.
- **County Governments Act: Sections 94 and 95** provide that counties are to establish mechanisms to facilitate public communication and access to information with the widest public outreach.
- **The Public Finance Management Act: Section 207** provides that County Governments are to establish structures, mechanisms and guidelines for citizen participation.

3. What data and research are available regarding older persons' participation in public life and in decision-making processes? Please indicate how national or sub-national data is disaggregated by sex, age and inequality dimensions, and what indicators are used to monitor older persons' participation in public life and in decision-making processes.

There have been significant efforts and research focusing on the older person's participation in public life and decision making. Examples:

- <https://www.scirp.org/journal/paperinformation?paperid=109778>
- [voice-and-accountability-in-the-older-persons-cash-transfer-evidence-from-older-citizen-monitors-in-kenya.pdf \(helpage.org\)](#)

The progressive social protection coverage takes into consideration how the number of older persons will increase between 2024 and 2028.



**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION & SENIOR CITIZEN AFFAIRS
DIRECTORATE OF SOCIAL DEVELOPMENT**

Kenya has an Enhanced Single Registry for Social Protection that provides age and sex disaggregated data for all age categories including older persons who receive regular government-financed cash transfers and potential beneficiaries.

4. What are the challenges and barriers that older persons face regarding participation in public life and in decision-making processes, including the impact of intersectional discrimination and inequality based on age, gender, disability, race, ethnicity, migratory status and other grounds?

- i. Stigma and discrimination as older persons are often perceived as a burden, dependent, unproductive, undeserving or helpless.
- ii. Social exclusion as a result of marginalization and vulnerability.
- iii. Inadequate representation, participation and engagement of older persons. Older persons have fewer opportunities to establish or join organizations that can represent their demands as older persons.
- iv. Limited awareness among older persons

5. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress when their right to participate in public life and in decision-making processes is violated?

Non-Judicial Mechanism: National Gender and Equality Commission, Kenya National Commission on Human Rights, and Commission on Administrative Justice all have complaints and investigative powers on all matters of discrimination and violation of rights.

Judicial mechanisms: The Judiciary is one of the State organs established under Chapter 10, Article 159 of the Constitution of Kenya. The Judiciary is an



**MINISTRY OF LABOUR AND SOCIAL PROTECTION
STATE DEPARTMENT FOR SOCIAL PROTECTION & SENIOR CITIZEN AFFAIRS
DIRECTORATE OF SOCIAL DEVELOPMENT**

independent custodian of justice in Kenya, and its primary role is to exercise judicial authority given to it, by the people of Kenya. The Judiciary delivers justice in line with the Constitution and other laws. It resolves disputes in a just manner with a view to protecting the rights and liberties of all, including older persons, thereby facilitating the attainment of the ideal rule of law.